



For a thriving New England

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September 18, 2015

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Shea Concrete Products Inc.  
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**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)<sup>1</sup> hereby gives notice to the addressed persons of its intent to file suit, pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365, for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R. Part 135 (the “Notice”) to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is three-fold. First, Shea Concrete Products, Inc. (hereinafter “Shea Concrete”) is discharging stormwater directly associated with the concrete products site at 773 Salem Street, Wilmington, MA 01887 (the “Facility”), to the waters of the United States without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Shea Concrete has failed to obtain coverage under any Clean Water Act

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<sup>1</sup> CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Charles watershed for, among other things, fishing, recreation, boating, scenic/aesthetic, and scientific purposes. CLF’s membership includes people who live in or near the Charles watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF’s members are adversely affected by the Facility’s stormwater and process wastewater discharges to receiving waters without a permit and in violation of the Clean Water Act.

permit, including the Multi-Sector General Permit<sup>2</sup> (“MSGP”) adopted by the United States Environmental Protection Agency (“EPA”) for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, Shea Concrete has failed to obtain individual National Pollutant Discharge Elimination System (“NPDES”) permit coverage for the Facility’s process wastewater discharges associated with its industrial processes, including, but not limited to, washing materials and paved surfaces and spraying machinery.

## **BACKGROUND**

Martins Brook (Segment ID MA92-08), within the Charles watershed, is the primary outlet of Martins Pond (Segment ID MA92038), and flows for approximately 4.56 miles from Martins Pond before it confluences with the Ipswich River (Segment ID MA92-06). The greater Ipswich River (Waterbody ID MA32-05) flows to the Salem Beverly Waterway Canal, leading into Ipswich Bay and ultimately to the Atlantic Ocean.

Martins Brook is categorized as a Category 5 Waterbody, indicating that it is impaired or threatened for one or more uses and requires a TMDL.<sup>3</sup> EPA has designated Segment MA92-08 as impaired, pursuant to Section 303(d) of the Act, 33 U.S.C. §1313(d), for failure to meet minimum water quality standards for pollutants. Martins Brook is impaired for organic enrichment/oxygen depletion, impaired biota, and pathogens.<sup>4</sup> In addition, Segment MA92-08 of Martins Brook exchanges flow with Segment MA92-26, an unnamed tributary of Martins Brook. EPA has designated Segment MA92-26 as impaired, pursuant to Section 303(d) of the Act, 33 U.S.C. §1313(d), for failure to meet minimum water quality standards. This Segment is impaired for chloride.<sup>5</sup> Stormwater and urban-related runoff are significant contributors to this impairment.

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<sup>2</sup> ENVIRONMENTAL PROTECTION AGENCY (EPA), MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP), *available at* [http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015\\_finalpermit.pdf](http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_finalpermit.pdf) (last visited September 15, 2015).

<sup>3</sup> Massachusetts Year 2012 Integrated List of Waters, *available at* <http://www.mass.gov/eea/docs/dep/water/resources/07v5/12list2.pdf> (last visited September 15, 2015).

<sup>4</sup> See [http://ofmpub.epa.gov/tmdl\\_waters10/attains\\_waterbody.control?p\\_au\\_id=MA92-08&p\\_cycle=2012&p\\_state=MA&p\\_report\\_type=](http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_au_id=MA92-08&p_cycle=2012&p_state=MA&p_report_type=) (last visited September 15, 2015); [http://ofmpub.epa.gov/tmdl\\_waters10/attains\\_waterbody.control?p\\_au\\_id=MA92-08&p\\_cycle=2012&p\\_state=MA&p\\_report\\_type=](http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_au_id=MA92-08&p_cycle=2012&p_state=MA&p_report_type=) (last visited September 15, 2015).

<sup>5</sup> [http://ofmpub.epa.gov/waters10/attains\\_waterbody.control?p\\_au\\_id=MA92-26&p\\_list\\_id=MA92-26&p\\_cycle=2012](http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA92-26&p_list_id=MA92-26&p_cycle=2012) (last visited September 15, 2015).

The Ipswich River (Segment ID MA92-06) is also categorized as a Category 5 Waterbody, indicating that it is impaired for one or more uses and requires a TMDL.<sup>6</sup> EPA has designated Segment MA92-06 as impaired, pursuant to Section 303(d) of the Act, 33 U.S.C. §1313(d), for failure to meet minimum water quality standards.<sup>7</sup> This Segment is impaired for mercury and dissolved oxygen.<sup>8</sup> Under the Massachusetts Surface Water Quality Standards, the Ipswich River is a Class B waterbody,<sup>9</sup> “designated as a habitat for fish, other aquatic life, and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation.”<sup>10</sup> Where designated in 314 CMR 4.06, waterbodies “shall be suitable as a source of public water,” “shall be suitable for irrigation and other agricultural uses and for compatible industrial cooling and process uses,” and “shall have consistently good aesthetic value.”<sup>11</sup>

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.<sup>12</sup> Industrial activities, such as material handling and storage, equipment maintenance and cleaning, industrial processing, and other operations that occur at industrial facilities, may be exposed to stormwater.<sup>13</sup> Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.<sup>14</sup>

Shea Concrete is required to apply for coverage under a Clean Water Act discharge permit, such as the MSGP, in order to discharge lawfully. Since at least 2010, Shea Concrete has been specifically required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”) within ninety days after the initial issuance of the MSGP.<sup>15</sup> On June 16, 2015, after expiration of the prior permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2015 permit.

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<sup>6</sup> Massachusetts Year 2012 Integrated List of Waters, *available at* <http://www.mass.gov/eea/docs/dep/water/resources/07v5/12list2.pdf> (last visited September 15, 2015).

<sup>7</sup> See 33 U.S.C. § 1313(d).

<sup>8</sup> [http://ofmpub.epa.gov/waters10/attains\\_waterbody.control?p\\_au\\_id=MA92-26&p\\_list\\_id=MA92-26&p\\_cycle=2012](http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA92-26&p_list_id=MA92-26&p_cycle=2012) (last visited September 15, 2015).

<sup>9</sup> Class B for fresh water sections; [http://water.epa.gov/scitech/swguidance/standards/wqslibrary/upload/mawqs\\_figures\\_tables.pdf](http://water.epa.gov/scitech/swguidance/standards/wqslibrary/upload/mawqs_figures_tables.pdf) (last visited September 15, 2015).

<sup>10</sup> See Massachusetts Surface Water Quality Standards, 314 MASS. CODE REGS. 4.05:3(b).

<sup>11</sup> *Id.*

<sup>12</sup> See 40 C.F.R. § 122.26(b)(13).

<sup>13</sup> See 40 C.F.R. § 122.26(b)(14).

<sup>14</sup> See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

<sup>15</sup> EPA’s MSGP was first issued in 1995, reissued in 2000, 2008, and 2015. See 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); 73 Fed. Reg. 56,572 (Sept. 29, 2008); 80 Fed. Reg. 34,403 (June 16, 2015). See MSGP parts 1.1 and 1.2.

Shea Concrete has failed to obtain coverage under the MSGP or any other valid authorization, at any time. Therefore, Shea Concrete is operating in violation of the Clean Water Act.

### **PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

Shea Concrete is the person, as defined by as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Shea Concrete has operated the Facility since at least 2007 and currently advertises as the operator of the Facility, and is registered with the Secretary of the Commonwealth as the operator of the facility.<sup>16</sup> Shea Concrete and its agents and directors, including but not limited to Edward Shea, President and Director, have operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater and process wastewater at the Facility, in compliance with the Clean Water Act.

### **LOCATION OF THE ALLEGED VIOLATION**

The violations alleged in this Notice have occurred and continue to occur at the concrete products Facility located at 773 Salem Street, P.O. Box 520, Wilmington, MA 01887.

### **ACTIVITIES ALLEGED TO BE VIOLATIONS**

Shea Concrete has, and continues to, engage in “industrial activities, and its operations fall under SIC Codes 3271–3275, within the meaning of 40 C.F.R. § 122.26(b)(14).<sup>17</sup> Because the Facility has primary SIC Codes of 3271–3275 and discharges stormwater associated with industrial activity, Shea Concrete is required to apply for coverage, obtain coverage, and comply with the requirements of an NPDES permit, such as the MSGP. In addition, Shea Concrete is required to obtain individual NPDES permit coverage for process water discharges that may result from activities such as washing materials and paved surfaces and spraying machinery. Shea Concrete has failed to take any of these required steps.

Activities at the Facility include, but are not limited to storing, moving, and processing sand and gravel (exposed aggregate), cement, fly ash, and other materials outside or otherwise exposing them to the elements; operating and storing heavy machinery and equipment outdoors; and driving

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[http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042558803&SEARCH\\_TY PE=1](http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042558803&SEARCH_TY PE=1) (last visited September 15, 2015).

<sup>17</sup> See MSGP, Appendix D: Activities Covered. Concrete products facilities are identified by the SIC Codes 3271–3275 and subject to the requirements of the MSGP for stormwater discharges.

vehicles on and off the Facility, thereby tracking pollutants off-site. All of these activities at the Facility have contaminated the site with industrial pollutants.

Sand and gravel (exposed aggregate), cement, fly ash, and other materials; machinery and equipment; and vehicles at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over sand, gravel, cement, and fly ash piles; machinery and equipment; vehicles; and other exposed materials at the Facility, picking up dust, total suspended solids (TSS), total dissolved solids (TDS), diesel/gas fuel, oil, heavy metals, trash, and other pollutants associated with the Facility's operations. The polluted runoff is then conveyed off-site into waters of the United States.

In addition, to the extent that Shea Concrete uses water in its industrial processes, including, but not limited to, washing materials and paved surfaces and spraying machinery, that water becomes "process wastewater" (also referred to as "process water"), as defined in 40 C.F.R. § 122.2.<sup>18</sup> Discharges of process wastewater are not covered under the MSGP. Discharges of process wastewater must instead be covered under an individual NPDES permit. CLF intends to pursue claims related to Shea Concrete's unpermitted discharges of process water to waters of the United States.

## **STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED**

The Clean Water Act prohibits the discharge of pollutants to waters of the United States, except in accordance with a valid NPDES permit.<sup>19</sup> Shea Concrete discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its Facility into waters of the United States. Because Shea Concrete has not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, it is illegally discharging stormwater without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).<sup>20</sup> By failing to apply for and comply with the specific requirements of the MSGP and individual NPDES permit program, Shea Concrete is in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, unpermitted discharges of process wastewater constitute violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

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<sup>18</sup> 40 C.F.R. § 122.2 defines "process wastewater" as "any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product."

<sup>19</sup> 33 U.S.C. § 1311(a).

<sup>20</sup> See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term "discharge of a pollutant" as, *inter alia*, "any addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'").

CLF puts Shea Concrete on notice that CLF intends to pursue claims related to Shea Concrete's unpermitted discharges of process water to waters of the United States.

**a. Shea Concrete is discharging stormwater to waters of the United States without a permit.**

Shea Concrete is an industrial discharger with primary SIC Codes of 3271–3275, which means that, pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), Shea Concrete is obligated to apply for coverage under the MSGP or obtain other legal authorization. Because Shea Concrete has operated and continues to operate without a permit under Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Shea Concrete is in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

In addition, during storm events, Shea Concrete's "industrial activities" at its Facility have resulted in a "discharge of pollutants," within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and "stormwater discharge associated with industrial activity," within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches.<sup>21</sup> There have been many such storm events since 2010. The Facility is generating pollutants from and through at least the following point sources: the sand, gravel, cement, and fly ash piles that are open to the elements; the machines and equipment left outdoors, and the vehicles driving on and off the Facility, while additionally conveying pollutants through site grading, surface water channels, subsurface hydrological connections, detention ponds, culverts, and other conveyances to Martins Brook.<sup>22</sup> Martins Brook confluences with the Ipswich River, which flows into the Salem Beverly Waterway Canal and into Ipswich Bay and the Atlantic Ocean, all of which are "waters of the United States," as defined in 40 C.F.R. § 122.2, and, therefore, "navigable waters," as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

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<sup>21</sup> See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

<sup>22</sup> These discharges constitute "point sources," as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. CLF specifically puts Shea Concrete on notice that the unpermitted stormwater discharges associated with industrial activity include discharges from the Facility areas specified in 40 C.F.R. § 122.26(b)(14). See also 40 C.F.R. § 122.2, which states that the definition of "discharge of a pollutant" "includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man[.]"



**b. Shea Concrete is discharging process water to waters of the United States without a permit.**

Wastewater associated with industrial processes, including, but not limited to, washing materials and paved surfaces and spraying machinery, is classified as “process wastewater” under the federal Clean Water Act and as defined in 40 C.F.R. § 122.2. Wastewater produced by washing materials and paved surfaces and spraying machinery can contain a variety of pollutants, including detergents, oil, grease, heavy metals, and other pollutants associated with the Facility’s operations. In addition, solids suspended or dissolved in washwater can pollute ground and surface waters. Process wastewater can have severe and long-term impacts on aquatic environments.

Discharges of process water that result from washing materials and paved surfaces and spraying machinery are not covered under the MSGP. Discharges of process wastewater must instead be covered under an individual NPDES permit. Shea Concrete does not have an individual NPDES permit authorizing the discharge of pressure washwater to waters of the United States. CLF intends to pursue claims related to Shea Concrete’s unpermitted discharges of process water to waters of the United States, namely Martins Brook and the Ipswich River.

**c. Shea Concrete is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.**

Shea Concrete is violating Sections 402(p)(3)(A) and 402(p)(3)(4) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.<sup>23</sup> The Facility has primary SIC Codes of 3271–3275 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.<sup>24</sup> Shea Concrete’s failure to obtain coverage and comply with the permit is in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).<sup>25</sup>

**1) Shea Concrete Must Develop and Implement a Stormwater Pollution Prevention Plan (SWPPP).**

As a prerequisite to applying for coverage under the MSGP, Shea Concrete must develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”).<sup>26</sup> The SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control

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<sup>23</sup> MSGP Parts 1.1 and 1.2.

<sup>24</sup> See MSGP Parts 1.1 and 8.E.

<sup>25</sup> A thorough search of EPA’s database indicates that Shea Concrete has not filed an NOI for the Facility.

<sup>26</sup> See MSGP Part 5.

measures, and schedules and procedures pertaining to control measures and monitoring.<sup>27</sup> Shea Concrete has failed to develop and implement a SWPPP in accordance with the MSGP requirements, in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

## **2) Shea Concrete Must Submit to EPA a Complete Notice of Intent to be Covered under the MSGP.**

To be eligible to discharge under the MSGP, Shea Concrete must submit a complete Notice of Intent (“NOI”) to the EPA.<sup>28</sup> To complete the NOI, Shea Concrete is required to determine whether the body of water to which the stormwater discharges is an “impaired” waterbody, and whether the Facility discharges any specific pollutants listed on the NOI to that waterbody.<sup>29</sup> Martins Brook is classified as an “impaired” water.<sup>30</sup> Additionally, as part of preparing the NOI, the covered Facility must make certain verifications, such as ensuring that no harm is done to a species in violation of the Endangered Species Act.<sup>31</sup> Shea Concrete has failed to prepare and file an NOI meeting all applicable requirements, in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

## **3) Shea Concrete Must Take Control Measures and Meet Water-Quality Effluent Limitations.**

To be eligible to discharge under the MSGP, Shea Concrete must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. Shea Concrete must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.<sup>32</sup> These control practices must be in accordance with good engineering practices and manufacturer’s specifications.<sup>33</sup> If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.<sup>34</sup> Shea Concrete has failed to cover the materials and operations that may result in polluted stormwater runoff. Shea Concrete has not implemented the required control measures, in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

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<sup>27</sup> See MSGP Part 5.2.

<sup>28</sup> See MSGP Part 1.2.

<sup>29</sup> See MSGP Part 2.2.2.

<sup>30</sup> See *supra* footnotes 3–5.

<sup>31</sup> See MSGP Parts 1.1.4.5 and 2.3.

<sup>32</sup> See MSGP Part 2.1.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*; MSGP Part 4.



#### **4) Shea Concrete Must Conduct Routine Facility Inspections.**

To be eligible to discharge under the MSGP, Shea Concrete must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.<sup>35</sup> Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.<sup>36</sup> These inspections must occur when the Facility is in operation.<sup>37</sup> The schedule of these inspections must be included in the Facility's SWPPP and be performed by qualified personnel.<sup>38</sup> Shea Concrete has failed to conduct the required routine inspections in accordance with the MSGP requirements, in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

#### **5) Shea Concrete Must Comply with the Required Monitoring and Sampling Procedures.**

To be eligible to discharge under the MSGP, Shea Concrete must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.<sup>39</sup> The MSGP requires five types of analytical monitoring (one or more of which may apply), including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.<sup>40</sup> An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.<sup>41</sup> Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.<sup>42</sup> All monitoring data collected under the MSGP must be reported to EPA. Furthermore, because Martins Brook is an "impaired water" under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), Shea Concrete must monitor for all pollutants for which Martins Brook is impaired.<sup>43</sup> Shea Concrete has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to EPA, in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

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<sup>35</sup> See MSGP Part 3.1.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> See MSGP Part 6.

<sup>40</sup> See MSGP Part 6.2.

<sup>41</sup> See MSGP Part 6.1.1.

<sup>42</sup> See MSGP Part 6.1.3.

<sup>43</sup> See MSGP Part 6.2.4.

## **6) Shea Concrete Must Carry out the Required Reporting and Recordkeeping.**

Shea Concrete must maintain and submit any and all required monitoring data.<sup>44</sup> Such monitoring data includes the following: an annual report to EPA which includes the Facility's findings from the annual comprehensive site inspection and any documentation of corrective actions;<sup>45</sup> an Exceedance Report to the EPA if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;<sup>46</sup> and any other required reports under the MSGP.<sup>47</sup> Shea Concrete has failed to maintain the required records and failed to submit all required monitoring data under the MSGP, in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

## **7) Shea Concrete Must Comply with the Requirements of MSGP Subpart E**

Shea Concrete must also comply with the sector-specific requirements contained in Subpart E of the MSGP.<sup>48</sup> Subpart E requires concrete products facilities to implement additional technology-based effluent limits,<sup>49</sup> meet additional SWPPP requirements,<sup>50</sup> and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to concrete products facilities.<sup>51</sup> Shea Concrete has failed to comply with the requirements of Subpart E of the MSGP, in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

## **DATES OF VIOLATION**

Each day on which Shea Concrete operates its Facility without permit coverage or discharges stormwater and/or process wastewater without a permit from the Facility is a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Shea Concrete has discharged stormwater without a permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since at least 2010 on which there has been a measurable precipitation event.

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<sup>44</sup> See MSGP Part 7.

<sup>45</sup> See MSGP Part 7.5.

<sup>46</sup> See MSGP Part 7.6.

<sup>47</sup> See MSGP Part 7.7.

<sup>48</sup> See MSGP, Appendix D, Table D-1, Part 8.E.

<sup>49</sup> See MSGP Part 8.E.2.

<sup>50</sup> See MSGP Part 8.E.3.

<sup>51</sup> See MSGP Part 8.E.4.



Every day, since at least 2010, on which Shea Concrete has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

Each day on which Shea Concrete operates its Facility without permit coverage or discharges process water without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

### **RELIEF REQUESTED**

Shea Concrete is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Shea Concrete to a penalty up to \$37,500 per day for each violation that occurred after January 12, 2009.<sup>52</sup> CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. §§ 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Shea Concrete to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

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<sup>52</sup> See 40 C.F.R. § 19.2.



## **CONCLUSION**

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Amanda Helwig within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,

A handwritten signature in blue ink that reads "Amanda J. Helwig".

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